

ARKANSAS SUPREME COURT

No. CR 08-938

CARL HERINGER, JR.
Appellant

v.

STATE OF ARKANSAS
Appellee

Opinion Delivered June 25, 2009

PRO SE APPEAL FROM THE CIRCUIT
COURT OF CRAIGHEAD COUNTY,
WESTERN DISTRICT, CR 2004-537,
HON. JOHN N. FOGLEMAN, JUDGE

AFFIRMED.

PER CURIAM

In a 2004 negotiated plea agreement, appellant Carl Heringer, Jr., entered an unconditional plea of guilty to manufacturing a controlled substance (methamphetamine) and the appellee State entered a *nolle prosequi* as to four other criminal counts. Appellant was sentenced to 120 months' imprisonment and an additional five years' suspended imposition of sentence. Appellant had no right of appeal from the unconditional plea. Ark. R. App. P.–Crim. 1(a); *also Seibs v. State*, 357 Ark. 331, 166 S.W.3d 16 (2004); *Bradford v. State*, 351 Ark. 394, 94 S.W.3d 904 (2003).

In 2008, appellant filed in the trial court a petition to correct an illegal sentence pursuant to Arkansas Code Annotated § 16-90-111 (1987). The trial court denied the petition, and appellant has lodged a pro se appeal here from the order.

We do not reverse a denial of postconviction relief unless the trial court's findings are clearly erroneous. *Greene v. State*, 356 Ark. 59, 146 S.W.3d 871 (2004). A finding is clearly erroneous when, although there was evidence to support it, the appellate court after reviewing the entire

evidence is left with the definite and firm conviction that a mistake has been committed. *Flores v. State*, 350 Ark. 198, 85 S.W.3d 896 (2002).

Section 16-90-111 has been superseded to the extent that it conflicts with the time limitations for postconviction relief under Arkansas Rule of Criminal Procedure Rule 37.1. *State v. Wilmoth*, 369 Ark. 346, 255 S.W.3d 419 (2007). As appellant entered a guilty plea to the criminal charge filed against him, he was required to seek relief under this statute within ninety days from the date that the judgment was entered. Ark. R. Crim. P. 37.2(c); *State v. Wilmoth, supra*. Appellant's petition was filed almost four years after that date and was therefore not timely as a request for relief pursuant to section 16-90-111. The trial court did not err in denying appellant's petition.

We note that appellant asked the trial court, and now asks this court, to issue a declaratory judgment pertaining to his parole-eligibility in the underlying criminal sentence. However, the trial court's order addressed appellant's petition only as one under section 16-90-111, and not as a complaint for declaratory judgment pursuant to Arkansas Code Annotated §§ 16-111-101–111 (Repl. 2006). It was incumbent upon appellant to obtain a ruling on specific claims in order for the arguments to have been preserved for appeal. *Otis v. State*, 364 Ark. 151, 160, 217 S.W.3d 839, 844 (2005); *Raymond v. State*, 354 Ark. 157, 118 S.W.3d 567 (2003). Here, appellant's failure to do so precludes this court from addressing on appeal any declaratory judgment matters. *Id.*

Affirmed.